

FILED

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**Board of Vocational Nursing
and Psychiatric Technicians**

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**BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. VN-2006-1612

DAVETTA FAYE SIMPSON, LVN
P.O. Box 3231
Riverside, CA 92519

A C C U S A T I O N

Vocational Nurse License No. VN 215425

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this
Accusation solely in her official capacity as the Executive Officer of the Board of Vocational
Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about June 8, 2005, the Board of Vocational Nursing and
Psychiatric Technicians issued Vocational Nurse License Number VN 215425 to Davetta Faye
Simpson (Respondent). The Vocational Nurse License was in full force and effect at all times
relevant to the charges brought herein and will expire on June 30, 2009, unless renewed.

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1 (a) Obtain or possess in violation of law, or prescribe, or except as
2 directed by a licensed physician and surgeon, dentist or podiatrist administer to
3 himself or herself or furnish or administer to another, any controlled substance as
defined in Division 10 of the Health and Safety Code, or any dangerous drug as
defined in Section 4022.

4 (b) Use any controlled substance as defined in Division 10 of the
5 Health and Safety Code, or any dangerous drug as defined in Section 4022, or
6 alcoholic beverages, to an extent or in a manner dangerous or injurious to himself
or herself, any other person, or the public, or to the extent that the use impairs his
or her ability to conduct with safety to the public the practice authorized by his or
her license.

7 (c) Be convicted of a criminal offense involving possession of any
8 narcotic or dangerous drug, or the prescription, consumption, or
9 self-administration of any of the substances described in subdivisions (a) and (b)
of this section, in which event the record of the conviction is conclusive evidence
thereof.

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12 8. Section 490 of the Code provides, in pertinent part, that the Board may
13 suspend or revoke a license when it finds that the licensee has been convicted of a crime
14 substantially related to the qualifications, functions or duties of a licensed vocational nurse.

15 9. Section 492 of the Code states:

16 Notwithstanding any other provision of law, successful completion of any
17 diversion program under the Penal Code, or successful completion of an alcohol
and drug problem assessment program under Article 5 (commencing with section
23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit
18 any agency established under Division 2 ([Healing Arts] commencing with
Section 500) of this code, or any initiative act referred to in that division, from
19 taking disciplinary action against a licensee or from denying a license for
professional misconduct, notwithstanding that evidence of that misconduct may
20 be recorded in a record pertaining to an arrest.

21 This section shall not be construed to apply to any drug diversion program
22 operated by any agency established under Division 2 (commencing with Section
500) of this code, or any initiative act referred to in that division.

23 10. California Code of Regulations, title 16, section 2521, states:

24 For the purposes of denial, suspension, or revocation of a license pursuant
25 to Division 1.5 (commencing with Section 475) of the Business and Professions
Code, a crime or act shall be considered to be substantially related to the
26 qualifications, functions or duties of a licensed vocational nurse if to a substantial
degree it evidences present or potential unfitness of a licensed vocational nurse to
27 perform the functions authorized by his license in a manner consistent with the
public health, safety, or welfare. Such crimes or acts shall include but not be
28 limited to those involving the following:

1 (a) Procuring a license by fraud, misrepresentation, or mistake.

2 (b) A conviction of practicing medicine without a license in violation of
3 Chapter 5 of Division 2 of the Business and Professions Code.

4 (c) Violating or attempting to violate, directly or indirectly, or assisting in
5 or abetting the violation of, or conspiring to violate any provision or term of
6 Chapter 6.5, Division 2 of the Business and Professions Code.

7 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,
8 whether a licensed physician or not, in the performance of or arranging for a
9 violation of any of the provisions of Article 13, Chapter 5, Division 2 of the
10 Business and Professions Code.

11 (e) Conviction of a crime involving fiscal dishonesty.

12 (f) Any crime or act involving the sale, gift, administration, or furnishing
13 of "narcotics or dangerous drugs or dangerous devices" as defined in Section
14 4022 of the Business and Professions Code.

15 11. California Code of Regulations, Title 16, section 2522.5 states:

16 (a) When considering the suspension or revocation of a license on the
17 ground that a licensed vocational nurse has been convicted of a crime, the Board,
18 in evaluating the rehabilitation of such person and his eligibility for a license will
19 consider the following criteria:

20 (1) Nature and severity of the act(s) or offense(s).

21 (2) Total criminal record.

22 (3) The time that has elapsed since commission of the act(s) or
23 offense(s).

24 (4) Whether the licensee has complied with any terms
25 of parole, probation, restitution, or any other
26 sanctions lawfully imposed against the licensee.

27 (5) If applicable, evidence of expungement proceedings
28 pursuant to Section 1203.4 of the Penal Code.

(6) Evidence, if any, of rehabilitation submitted by the
licensee.

12. Section 125.3 of the Code provides, in pertinent part, that the Board may
request the administrative law judge to direct a licentiate found to have committed a violation or
violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
and enforcement of the case.

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13. Section 4022 of the Code states

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006.

DRUG

14. Marijuana is a Schedule I controlled substance as designated by Health and Safety Code section 11054, subdivision (d)(13), and is a dangerous drug pursuant to Business & Professions Code section 4022.

FIRST CAUSE FOR DISCIPLINE

(February 13, 2007 Criminal Conviction for Possession of Marijuana & Contributing to the Delinquency of a Minor on July 27, 2005)

15. Respondent has subjected her license to disciplinary action under sections 490 and 2878, subdivision (f) of the Code in that Respondent was convicted of a crime that is substantially related to the qualifications, functions, and duties of a licensed vocational nurse. The circumstances are as follows:

a. On or about February 13, 2007, in a criminal proceeding entitled *People v. Davetta Faye Simpson*, in Riverside County Superior Court, case number RIM477287, Respondent was convicted on her plea of guilty of violating Health and Safety Code section 11357, subdivision (a), possession of less than one ounce of marijuana, a misdemeanor; and Penal Code section 272, contributing to the delinquency of a minor, a misdemeanor.

b. As a result of the conviction, on or about February 13, 2007, Respondent was sentenced to 30 days in custody (on the RSO Weekender Program), 36 months summary probation, enrollment in parenting classes, and payment of fees, fines and restitution in the amount of \$629.

1 c. The facts that led to the conviction were that on or about July 27,
2 2005, the Riverside County Sheriff's Department (Jurupa Valley) responded to a call of drug
3 activity at a Rubidoux residence. The deputy spoke to "Daryl," the father of Respondent's minor
4 son. Daryl reported to the deputy that his son called him that day to report finding another bag
5 of marijuana in the house. After receiving the phone call from the minor child, he called the
6 Sheriff's Department from his Menifee residence, and arrived at Respondent's house the same
7 time as the deputy. The child reported that Respondent had marijuana in her room most of the
8 time and that she rolled it into cigarettes and smoked them in front of him. He stated that
9 Respondent kept the marijuana in baggies in plain view behind the computer in Respondent's
10 bedroom. The child also stated that she sells marijuana to several of the neighbors in the area.
11 The deputy contacted Respondent by telephone. Respondent told the officer she had a
12 prescription for the marijuana and that she used it to treat pain for a broken neck suffered in an
13 automobile accident a year earlier. She could not provide any documentation that the marijuana
14 was legally prescribed. Respondent then told the officer that she had been growing her own
15 marijuana, but had recently destroyed the plants. The deputy allowed Respondent to speak to the
16 minor child. The deputy heard Respondent yelling at the child through the phone; the child
17 looked scared and sad. The child told the officer he was afraid of what Respondent would do to
18 him when he got home. Respondent refused to allow the father (Daryl) to take the child.
19 Twenty minutes later, the sheriff's dispatch center received a call from the child claiming his
20 mother (Respondent) was going to kill him. The dispatcher reported hearing a female yelling in
21 the background. When the deputy returned to Respondent's residence, a female friend answered
22 the door. The deputy could hear Respondent yelling. Respondent told the deputy that up until
23 two days prior, she grew her own marijuana, that her child knew she smoked marijuana, he knew
24 where she kept it, she knew it was easily accessible to her child, but that she didn't care.
25 Respondent was agitated and upset and was speaking very loudly. Respondent told the deputy
26 she was mad at her son for calling the Sheriff's Department and that she didn't feel she was
27 doing anything wrong. The child told the deputy he was afraid to be alone with his mother. The
28 female friend offered to take the child out for ice cream while Respondent calmed down.

1 **SECOND CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct - Possession of a Controlled Substance on July 27, 2005)**

3 16. Respondent has subjected her license to disciplinary action under section
4 2878.5, subdivision (a) of the Code in that she possessed a controlled substance (marijuana), as
5 detailed in paragraph 15, above. Respondent further admitted to the sheriff deputy that she had
6 been growing her own marijuana, a felony.

7 **THIRD CAUSE FOR DISCIPLINE**

8 **(Unprofessional Conduct - Use of a Controlled Substance)**

9 17. Respondent has subjected her license to disciplinary action under section
10 2878.5, subdivision (b) of the Code. In the Riverside County Sheriff Deputy's report dated July
11 25, 2005, Respondent admitted that she used marijuana on a regular basis. Respondent's minor
12 son reported that he observed Respondent smoking marijuana in his presence, as detailed in
13 paragraph 15, above.

14 **FOURTH CAUSE FOR DISCIPLINE**

15 **(Unprofessional Conduct - Conviction Involving Possession of a Controlled Substance)**

16 18. Respondent has subjected her license to disciplinary action under section
17 2878.5, subdivision (c) of the Code in that on or about February 13, 2007, Respondent was
18 convicted on her plea of guilty of possessing marijuana, a controlled substance, as detailed in
19 paragraph 15, above.

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1 PRAYER

2 WHEREFORE, Complainant requests that a hearing be held on the matters herein
3 alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric
4 Technicians issue a decision:

- 5 1. Revoking or suspending Vocational Nurse License Number VN 215425,
6 issued to Davetta Faye Simpson;
- 7 2. Ordering Davetta Faye Simpson to pay the Board of Vocational Nursing
8 and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this
9 case, pursuant to Business and Professions Code section 125.3;
- 10 3. Taking such other and further action as deemed necessary and proper.
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12 DATED: April 29, 2008

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15 TERESA BELLO-JONES, J.D., M.S.N., R.N.
16 Executive Officer
17 Board of Vocational Nursing and Psychiatric Technicians
18 Department of Consumer Affairs
19 State of California
20 Complainant

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